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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7

8 UNITED STATES OF AMERICA,

No. CR 12-00119 SI

9 Plaintiff,

10 v.

**ORDER TO PRODUCE WITHHELD  
MATERIALS LOG AND MATERIALS  
FOR *IN CAMERA* REVIEW**

11 JOSEPH ORTIZ, *et. al*,

12 Defendants.  
13 \_\_\_\_\_/

14 On May 9, 2013, the Court ordered, subject to the requirements in an amended heightened  
15 protective order, the United States to disclose all non-Jencks discovery in the possession of or subject  
16 to the control of the Government, by no later than May 15, 2013. *See* Docket No. 635; *see also* Docket  
17 No. 499 (detailing the basis for the Court's order to produce discovery pursuant to a heightened  
18 protective order).

19 On May 15, 2013, the Government filed its notice of "compliance" with the Court's order, which  
20 made clear that the Government was not complying with the Court's order. Docket No. 647. To clarify  
21 the issue, on May 17, 2013, the Court ordered the Government to produce for the counsel of defendant  
22 Joseph Ortiz unredacted copies of all documents previously produced in redacted form. Docket No.  
23 649. Three days later, the Government responded that it was still refusing to produce materials that fell  
24 into three categories: (1) law enforcement reports; (2) *Giglio* material; and (3) material redacted to  
25 protect the safety of witnesses. Docket No. 650.

26 The next day, defendant Joseph Ortiz filed a response to the Government's notifications. Docket  
27 No. 653. Defendant argues, *inter alia*, that the Court should order the Government to produce a log of  
28 all of the materials that it is withholding.

1 In the Government's notices, it stated that "[t]he Court may sanction the government for its  
2 failure to comply" with the Court's orders. Docket No. 650 at 2; *see also* Docket No. 647 at 4.  
3 However, one of the factors that this Court will consider when determining the appropriateness of any  
4 sanctions will be the extent and importance of the withheld materials. The Court finds that it is  
5 necessary for it to have more information regarding the quality and quantity of withheld and redacted  
6 materials before it can determine the appropriate sanctions. A more thorough understanding of this  
7 information will also be useful to defendants in their arguments regarding sanctions. The Court in this  
8 case has been using logs similar to "privilege logs" to keep track of withheld material, whether the  
9 material are withheld because of an asserted privilege or other reason. *See* Docket Nos. 419, 609.

10 Accordingly, the Court ORDERS the Government to produce a log of all withheld and redacted  
11 materials **by no later than May 31, 2013.** The log shall contain the following information: (1) the  
12 Bates range for each document; (2) the nature of each document (i.e. South San Francisco police report,  
13 FBI 302, photographs, rap sheet, prior conviction of a witness); (3) whether the document is being  
14 completely or partially withheld (produced in redacted form); (4) the reason for the refusal to comply  
15 with the Court's order (i.e. witness safety, alleged Rule 16(a)(1) material, *Giglio*); (5) whether the  
16 document contains *Brady* material; and (6) whether the government intends to produce the document  
17 at a later date.

18 Additionally, the Court ORDERS the Government to produce for *in camera* review all withheld  
19 and redacted materials **by no later than May 31, 2013.**

20  
21 **IT IS SO ORDERED.**

22 Dated: May 23, 2013



23 SUSAN ILLSTON  
24 United States District Judge  
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